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Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

GLORIA IMELDA MUÑOZ-MEJIA,
Petitioner,

v.

ERIC. H. HOLDER, JR., ATTORNEY GENERAL,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

GLORIA IMELDA MUÑOZ-MEJIA
PRO SE
1829 State Avenue
Kansas City, Kansas 66102
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QUESTION PRESENTED

Whether the Ninth Circuit erred in concluding that the issue of whether an immigration judge should be expected or required to divulge his or her reasons for not exercising his or her *sua sponte* authority to reopen is so insubstantial as to not require further argument.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

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OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished. The opinion of the Board of Immigration Appeals appears at Appendix B and is unpublished. The decisions of the Immigration Judge appear at Appendices C and D and are also unpublished.

JURISDICTION

The Court of Appeals entered its judgment on October 18, 2010. No petition for rehearing was filed in this case. And, this Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves provisions of Title 8 of the Code of Federal Regulations. The pertinent provision appears at 8 C.F.R. § 1003.23.

STATEMENT OF THE CASE

On or about April 15, 1992, Petitioner entered the United States without inspection at or near San Ysidro, California. Subsequently, on or about November 17, 1994, Petitioner filed an Application for Asylum and related relief directly with the then-Immigration and Naturalization Service.

On or about March 16, 1995, Petitioner was placed in deportation proceedings and allegedly served with an Order to Show Cause, which ordered Petitioner to appear before the Los Angeles Immigration Court on July 27, 1995 at 8:30 A.M.

Unaware of said hearing, Petitioner failed to appear before the Los Angeles Immigration Court on or about July 27, 1995. The court, in turn, conducted a hearing and proceeded *in absentia*, pursuant to section 242 of the Immigration and Nationality Act, and ordered Petitioner deported from the United States to her native Guatemala – a fact, she would only become aware of more than a decade later.

On or about April 16, 2008, Petitioner was detained by U.S. Immigration and Customs Enforcement officials. It was then that Petitioner was first advised of the July 27, 1995 hearing and, more importunately, of her having been ordered deported in her absence.

On or about June 16, 2008, Petitioner filed a motion to reopen with Los Angeles immigration court. In her motion, Petitioner informed the court of the above-described facts and proceeded to request that the court exercises its *sua sponte* authority to both reopen her case and rescind the deportation order contained therein. The immigration judge, however, denied Petitioner's motion to reopen, on or about August 14, 2008, on the grounds that the record belied Petitioner because the court file contained sufficient evidence to suggest that Petitioner had been personally served with the Order

to Show Cause and, therefore, properly advised of the July 27, 1995 hearing. The denial, although explicit in detail, failed to address the reasons why the immigration judge was unwilling to exercise her *sua sponte* authority to reopen Petitioner's deportation proceedings.

Subsequently, on or about September 13, 2008, Petitioner filed a motion to reconsider. Said motion advised the immigration judge that Petitioner respectfully disagreed with her findings and, thus, respectfully requested that the judge reconsider her position denying Petitioner's motion to reopen and failing to exercise her *sua sponte* authority. The immigration judge, however, refused to reconsider her decision, contending that she had correctly denied Petitioner's motion to reopen and, in doing so, again failed to divulge her reasons for not exercising her *sua sponte* authority.

On or about February 4, 2009, Petitioner appealed to the Board of Immigration Appeals. And, after allowing both parties the opportunity to brief the issue, the board entered its order dismissing Petitioner's appeal. Specifically, the Board of Immigration Appeals stated that it found no basis to warrant the reopening of Petitioner's case *sua sponte*. However, it failed to address the issue of whether an immigration judge should be required to divulge her reasons for not exercising her *sua sponte* authority to reopen cases.

On or about June 17, 2010, Petitioner petitioned the United States Court of Appeals for the Ninth Circuit to review the decision, dated May 19, 2010, of the Board of Appeals. And, on or October 18, 2010, the Ninth Circuit court dismissed Petitioner's petition for review by concluding that the issues raised by the petition for review were "so insubstantial as to not require further argument." Pet. App. 2a.

REASONS FOR GRANTING THE PETITION

This case presents an interesting question that has not, but should, be settled by this Court: Should an immigration judge be required to divulge his or her reasons for exercising (or not) his or her *sua sponte* authority when reopening a matter previously before his or her court?

8 C.F.R. § 1003.23 states that "an Immigration Judge may upon his or her own motion at any time, or upon the motion of the Service or the alien, reopen or reconsider any case in which he or she has made a decision . . . ." While it is true that said provision does in fact afford an immigration judge broad discretion in deciding whether to reopen a removal case, it is silent as to whether the immigration judge is required to disclose the reasons for not exercising her *sua sponte* authority.

Further, while it may be argued that appellate courts have previously and uniformly held that with them lies no jurisdiction over the broad discretionary ability of both the office of the immigration judge and

the board of immigration appeals, it has never been specifically nor explicitly held that silence with regard to the exercise of such discretionary authority is allowable and/or absolute. In fact, with regard to *sua sponte* authority the Board of Immigration Appeals has only held that, absent exceptional circumstances, said discretionary authority is not meant for circumventing the regulations where enforcement results in hardship. *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). Thus, as no direct mention of silence has been made or explicitly allowed for by any honorable appellate body, it is herein argued that an immigration judge, when prompted to exercise said power, should be expected to divulge the reasons for opting to do so or not.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Gloria I. Muñoz-Mejia

GLORIA IMELDA MUÑOZ-MEJIA
PRO SE
1829 State Avenue
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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 10-71925

Agency No. A072-533-699

GLORIDA IMELDA MUNOZ-MEJIA
Petitioner,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
Respondent.

October 18, 2010, Decided

Before: O'SCANNLAIN, TROTT, and
W. FLETCHER, Circuit Judges.

ORDER

This is a petition for review of the Board of Immigration Apepals' ("BIA") order dismissing petitioner's appeal from the Immigration Judge's denial of her untimely motion for reconsideration.

We have reviewed petitioner's response to the court's June 25, 2010 order to show cause and conclude that the issues raised by the petition for review are so insubstantial as not to require further argument. Accordingly the petition for review is summarily denied in part. *See United States v. Hooton*, 693 F. 2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

To the extent petitioner contends that the BIA abused its discretion in refusing to reopen proceedings sua sponte, we lack jurisdiction in part to review this claim. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 202).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.

APPENDIX B

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Falls Church, Virginia 22041

File: A072 533 699 – Los Angeles, CA

IN RE: GLORIA IMELDA MUNOZ-MEJIA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Christie Woo-Thibodeaux
Assistant Chief Counsel

APPLICATION: Reconsideration

May 19, 2010, Decided

The respondent, a native and citizen of Guatemala, appeals from an Immigration Judge's decision dated January 5, 2009, denying her motion for reconsideration of the denial of her motion to reopen proceedings. The appeal will be dismissed.

Upon de novo review, we affirm the Immigration Judge's decision for the reasons stated therein. In reaching this conclusion, we note that the Immigration Judge determined that the respondent's motion for reconsideration was untimely filed. *See* 8 C.F.R. § 1003.23(b)(1). In this regard, the Immigration Judge's decision denying the respondent's motion to reopen proceedings was dated August 14, 2009. The respondent's motion for reconsideration was not received by the Immigration Court until September 19, 2008. The Immigration Judge further determined that the respondent failed to identify any error of fact or law in her denial of the motion to reopen proceedings following the issuance of the July 27, 1995, in absentia order.

To the extent the respondent argues that the Immigration Judge erred in not reopening proceedings sua sponte, we find no basis to warrant sua sponte reopening. Specifically, the respondent's lack of due diligence supports a determination that this case does not involve an exceptional situation for sua sponte reopening under 8 C.F.R. § 1003.23(b)(1). Furthermore, the respondent has not indicated how her situation is exceptional. *See, e.g., Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).

ORDER: The appeal is dismissed

/s/ [Illegible]
FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

File No.: A 72 533 699

IN THE MATTER OF

MUNOZ MEJIA, GLORIA IMELDA

RESPONDENT.

IN DEPORTATION PROCEEDINGS

CHARGE: Section 241(a)(1)(B) of the Immigration and Nationality Act ("Act")
-Entered the United States without inspection

APPLICATION: Motion to Reconsider

ON BEHALF OF RESPONDENT:
Guillermo N. Lopez, Esquire
Lopez & Associates, Inc.
720 Minnesota Avenue
Kansas City, Kansas 66101

ON BEHALF OF THE GOVERNMENT:
Assistant Chief Counsel
U.S. Department of Homeland Security
606 S. Olive Street, 8th Floor
Los Angeles, California 90014

January 5, 2009, Decided

DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. Procedural History

On November 17, 1994, Respondent filed a Request for Asylum in the United States ("Form I-589") with the Government. On March 16, 1995, the Government personally served Respondent with an Order to Show Cause ("OSC"). The Government filed the OSC with the Court on March 21, 1995, thereby vesting jurisdiction over Respondent's proceedings with this Court pursuant to 8 C.F.R. 3.14. In the OSC, the Government alleged that Respondent, a native and citizen of Guatemala, entered the United States at or near San Ysidro, California, on or about April 15, 1992, without then being inspected by an immigration officer. Accordingly, the Government charged Respondent with deportability pursuant to section 241(a)(1)(B) of the Act. The OSC instructed Respondent to appear before the Court on July 27, 1995 at 8:30 a.m.

On July 27, 1995, Respondent failed to appear for her scheduled hearing, and the Court proceeded with an *in absentia* deportation hearing. The Government submitted a Record of Deportable Alien ("Form I-213"), which the Court found established deportability by clear, convincing, and unequivocal evidence. See Exhibit 3. The Court then ordered Respondent deported from the United States to Guatemala. The order was mailed to Respondent at "1648 ½ W. 11th Street, Apt. #21, Los Angeles, CA 90015," the address listed in the OSC and Form I-213.

On June 16, 2008, Respondent filed a motion to reopen with the Court. In that motion, Respondent claimed that she did not have notice of her hearing on July 27, 1995, because she never received the OSC. Respondent further claimed that she became aware of her *in absentia* deportation order on or about April 16, 2008, when officials from the U.S. Immigration and Customs Enforcement arrested her. Respondent claimed that she may be eligible for cancellation of removal for certain nonpermanent residents. Respondent also requested that venue be changed to Kansas City, Kansas because she now resides there. The Court denied the motion on August 14, 2008, finding that Respondent's assertion were belied by the record, which indicated that Respondent had been personally served with the OSC on March 16, 1995.

Further, the Court found that Respondent's request to reopen for the purpose of pursuing cancellation of removal was not supported by the appropriate application for relief and the supporting documentation.

On September 19, 2008, Respondent filed the pending Motion to Reconsider. In her Motion, Respondent states that she respectfully disagrees with the Court's finding that she was properly served with the OSC and claims that she has no recollection of ever receiving the OSC or being advised of the contents therein. Respondent therefore requests that the Court reconsider its prior decision denying her motion to reopen.

The Government filed its Memorandum in Opposition to Respondent's Motion to Reconsider on October 7, 2008. There Government argues that Respondent's Motion does not state specific errors of fact or law in the Court's August 14, 2008 decision denying Respondent's motion to reopen. The Government further argues that Respondent's motion to reopen did no merit *sua sponte* reopening.

For the following reasons, Respondent's Motion to Reconsider will be DENIED.

II. Law and Analysis

A motion to reconsider must be filed within thirty days of the date of the final administrative order of removal. 8 C.F.R. § 1003.23(b)(1)(2008. A motion to reconsider requests that the Immigration

Judge's original decision be reexamined in light of additional legal arguments, an argument or aspect of the case that was overlooked, or a change in the law. Matter of Cerna, 20 I.&N. Dec. 399 (BIA 1991). The motion must state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge's prior decision, and must be supported by any pertinent precedent authority. 8 C.F.R. § 1003.23(b)(2).

The Court finds Respondent's Motion to Reconsider to be untimely, as it was filed more than thirty days after the date of the final administrative order of removal. See 8 C.F.R. §1003.23(b)(1). This Court denied Respondent's to reopen on August 14, 2008. Respondent filed the pending Motion on September 19, 2008, over one month past the filing deadline. As such, the Court denies Respondent's Motion.

Moreover, Respondent has not specified any error of fact or law in the Court's prior decision denying her motion to reopen, and the Court finds no error. Respondent merely disagrees with the Court's decision and claims that she does not recall receiving the OSC. However, as previously addressed in the Court's August 14, 2008 decision, the record belies Respondent's claim. The record of proceedings clearly establishes that the Government personally served Respondent with the OSC on March 16, 1995. The OSC was property addressed to Respondent and instructed her, in both English and Spanish, to appear before the Court on July 27, 1995, at 8:30 a.m.

The OSC also informed Respondent of the consequences for failing to appear for her scheduled hearing. Respondent signed the OSC. Thus, the Court finds that its previous decision correctly denied Respondent's motion to reopen and did not contain any errors of fact or law.

Accordingly, the following order shall be entered:

ORDER

IT IS ORDERED that Respondent's Motion to Reconsider be DENIED.

/s/ [Illegible]
Lorraine J. Muñoz
Immigration Judge

APPENDIX D

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

File No.: A 72 533 699

IN THE MATTER OF

MUNOZ MEJIA, GLORIA IMELDA

RESPONDENT.

IN DEPORTATION PROCEEDINGS

CHARGE: Section 241(a)(1)(B) of the Immigration and Nationality Act ("Act")
-Entered the United States without inspection

APPLICATION: Motion to Reopen; Motion for Change of Venue.

ON BEHALF OF RESPONDENT:
Maria T. Lopez, Esquire
720 Minnesota Avenue
Kansas City, Kansas 66101

ON BEHALF OF THE GOVERNMENT:
Steven Marcus, Assistant Chief Counsel
U.S. Department of Homeland Security
606 S. Olive Street, 8th Floor
Los Angeles, California 90014

August 14, 2008, Decided

DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. Procedural History

On November 17, 1994, Respondent filed a Request for Asylum in the United States ("Form I-589") with the Government. On March 16, 1995, the Government personally served Respondent with an Order to Show Cause ("OSC"). The Government filed the OSC with the Court on March 21, 995, thereby vesting jurisdiction over Respondent's proceedings with this Court pursuant to 8 C.F.R. 3.14. In the OSC, the Government alleged that Respondent, a native and citizen of Guatemala, entered the United States at or near San Ysidro, California, on or about April 15, 1992, without then being inspected by an immigration officer. Accordingly, the Government charged Respondent with deportability pursuant to section 241(a)(1)(B) of the Act. The OSC instructed Respondent to appear before the Court on July 27, 1995 at 8:30 a.m.

On July 27, 1995, Respondent failed to appear for her scheduled hearing, and the Court proceeded with an *in absentia* deportation hearing. The Government submitted a Record of Deportable Alien ("Form I-213"), which the Court found established deportability by clear, convincing, and unequivocal evidence. See Exhibit 3. The Court then ordered Respondent deported from the United States to Guatemala. The order was mailed to Respondent at "1648 ½ W. 11th Street, Apt. #21, Los Angeles, CA 90015," the address listed in the OSC and Form I-213.

On June 16, 2008, Respondent filed the pending Motion to Reopen and Motion for Change of Venue ("Motion") with the Court based on lack of notice. In her Motion, Respondent claims that she was unaware of her scheduled hearing because she never received the OSC. Thus, she was unable to comply with the mandate of the Court and the Government. Furthermore, she explains that she became aware of her *in absentia* deportation order on or about April 16, 2008, when officials from the U.S. Immigration and Customs Enforcement arrested her. Respondent also requests that venue be changed to Kansas City, KS because she resides there. Finally, she claims that she may be eligible for cancellation of removal for certain nonpermanent residents. With her Motion, Respondent has submitted a signed affidavit.

On May 13, 2008, the Government filed an Opposition to Respondent's Motion to Reopen. The Government argues that Respondent received proper notice and that she has presented no evidence of exceptional circumstances to explain her absence from her scheduled hearing.

For the following reasons, Respondent's Motion to Reopen will be DENIED.

II. Law and Analysis

The Court may rescind an *in absentia* deportation order upon a motion filed at any time if the individual demonstrates that she did not receive proper notice of hearing or that she was in federal or state custody, and the failure to appear was not her fault. 8 C.F.R. § 1003.23(b)(4)(iii)(A) (2008). The OSC and notice of hearing are properly served if they are personally given to the respondent or, if personal service is not practicable, sent by certified mail to the respondent orthe counsel of record. INA § 242B(a)(2) (1995).

Once the OSC has been properly served, written notice of the deportation proceedings delivered by certified mail to the respondent at the last known address establishes proper service by clear, unequivocal, and convincing evidence. INA § 242B(c)(1) (1995); Chaidez v. Gonzales, 476 F.3d 773, 777 (9th Cir. 2007); Matter of Grijalva, 21 I&N Dec. 27, 33 (BIA 1995). Proof of actual service or receipt of the notice by the respondent is not required to effect service. Grijalva, 21 I&N Dec. at 33 (finding

that once the OSC has been properly served, the notice is properly served if sent by certified mail to the last known address, even if the notice is returned to the Court as unclaimed); Arrieta v. INS, 117 F.3d 429, 431 (9th Cir. 1997). A "strong presumption" of effective delivery arises where there is proof of attempted delivery of the hearing notice via certified mail, and the respondent can only rebut this presumption by demonstrating nondelivery or improper delivery by the Postal Service. Grijalva, 21 I&N Dec. at 37.

In the present case, Respondent claims that she was not notified of her July 27, 1995 hearing. The record belies her claim. The record of proceedings clearly establishes that the Government personally served her with the OSC on March 16, 1995. The OSC contained her named with the address, "1648 ½ W. 11 Street, Apt. #21, Los Angeles, CA 90015," which was provided by the Respondent. Respondent also signed the OSC. The OSC instructed Respondent, both in English and Spanish, to appear before the Court on July 27, 1995, at 8:30 a.m. and the consequences for failing to appear. Thus, the Court finds Respondent was properly served with the OSC and properly notified of her July 27, 1995 hearing.

Respondent also claims that she may be eligible for cancellation of removal for certain nonpermanent residents. However, she has not submitted an Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents ("Form EOIR-42B") and

supporting documentation to the Court. According to the regulations, any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. 8 C.F.R. § 1003.23(b)(3).

Accordingly, the following orders shall be entered:

ORDERS

IT IS ORDERED that Respondent's Motion to Reopen be DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Change of Venue be DENIED.

/s/ [Illegible]
Lorraine J. Muñoz
Immigration Judge